

Application No. 10/749,761

Response dated December 2, 2005

Reply to Office Action of September 9, 2005

**REMARKS**

Claims 1-46 are presented for Examiner Chapman's consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following responses is respectfully requested.

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### **Response to Rejections**

By way of the Office Action mailed September 9, 2005, claims 1-3, 5, 7, 9-13, 15, 16, 21, 24, 26-28, 30-32, 35, 37, 39, 41-43, 45, and 46 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 5,037,416 to Allen *et al.* (*Allen*). This rejection is respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, “[t]he elements must be arranged as required by the claim.” M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); *see also Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Also, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)).

*Allen* does not anticipate each and every element of Applicants’ claims 1, 16, 17 and 31. Claims 1, 16, 17 and 31 require that “the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece....”

The Examiner states,

Allen discloses the claimed elastic inner layer except for the inner layer is of unitary construction while the instant claimed inner layer is constructed of pieces attached together. The claims are drawn to a product, which does not depend on its method of production, and in each case the end product is the same. (OA at page 8).

Applicants respectfully disagree with this statement. First, the end product is not the same. *Allen* does not teach a crotch piece attached to a front piece and a back piece as required by Applicants’ claims. There are structural differences between the teachings of *Allen* and Applicants’ claims.

The Examiner states at page 3, that *Allen* discloses “a liquid permeable elastic inner layer (12) ... having ... a front piece (42) and a back piece (44) ... and a crotch piece (46)....”

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Applicants respectfully disagree. *Allen* does not teach an inner layer having pieces at all. These "pieces" of the "liner" as asserted by the Examiner are actually "portions" of the "diaper." (col. 3: ll. 14-16). Therefore, the Examiner fails to address the claim limitation, "wherein the crotch piece is attached to the front piece and the back piece...." *Allen* does not teach a non-continuous inner layer that is constructed of pieces attached together as claimed by Applicants. *Allen* fails to anticipate claims 1, 16, 17 and 31 because each and every element is not found, either expressly or inherently.

Second, the elastic inner layer of *Allen* does not teach a front piece and a back piece that are elastic in a lateral direction and a crotch piece that is elastic in a longitudinal direction as required by Applicants' claims 1, 16, 17 and 31. The Examiner cites col. 7, ll. 3-9 which states,

Generally the principal axis of elongation, in which the laminate 13 of the topsheet 12 is elastically extensible is generally parallel to the longitudinal axis A-A, although all or a portion of the topsheet may be elastically extensible in more than one direction or in a direction generally orthogonal the longitudinal axis A-A.

From this, the Examiner concludes at page 9 that, "Allen therefore discloses the product and fulfills the claimed limitations." Applicants respectfully disagree.

Nowhere does *Allen* teach a front piece being elastic in a lateral direction, a back piece being elastic in a lateral direction and a crotch piece being elastic in a longitudinal direction. *Allen* fails to anticipate claims 1, 16, 17 and 31 because each and every element is not found, either expressly or inherently and the identical invention is not shown in as complete detail as is contained in the claims. This rejection should be withdrawn.

Likewise, claims 2, 3, 5, 7, 9-13, 15, 21, 24, 26-28, 30, 32, 35, 37, 39, 41-43, 45, and 46 depend from claims 1, 17, or 31 and are patentably distinct over *Allen* for at least the same reasons as discussed above. Applicants respectfully request that the rejection as to these claims be withdrawn.

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By way of the Office Action mailed September 9, 2005, claims 4, 17, 18-20, 33 and 34 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,037,416 to Allen *et al.* (*Allen*) in view of U.S. Patent Number 4,756,709 to Stevens (*Stevens*). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

Claims 4, 17, 18, 19, 20, 33 and 34, require that "the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece", as discussed above. Neither *Allen* nor *Stevens*, alone or in combination, teach or suggest a disposable absorbent garment having an elastic inner layer as claimed. Therefore, a *prima facie* case of obviousness has not been established because the prior art references do not teach or suggest all the claim limitations. Applicants respectfully request the rejection as to these claims be withdrawn.

Additionally, there is no motivation to combine *Allen* and *Stevens*. The Examiner summarily states that

It would therefore be obvious to one of ordinary skill in the art at the time of the invention to construct the garment of *Allen* with a stretchable extensible outer layer as taught by *Stevens* to produce a diaper providing an improved fit to the wearer." (Office Action at page 4).

However, the Examiner fails to cite in either *Allen* or *Stevens* why one skilled in the art would be so motivated. *Allen* provides,

none of the teachings of the prior art provide the benefits of the present invention, particularly a disposable absorbent article having an elastically extensible topsheet which has material properties tailored to **optimize the comfort of the wearer**. One particular property of an elastically extensible topsheet which affects wearer comfort

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is the contact pressure the topsheet exerts against the wearer while the disposable article is in use. (col. 1: ll. 43-51) (emphasis added).

*Allen* proceeds to discuss the importance of keeping the contact force below a certain value. (col. 7, ll. 22-48). *Stevens* states that

The outer cover of the disposable diaper of the present invention is ... resiliently stretchable, thus providing ... a **form-fitting, anatomically self-adjusting** disposable diaper that **conforms** to the baby's shape. (col. 3: ll. 48-52, emphasis added).

One skilled in the art would not be motivated to construct the garment of *Allen* with the outer layer of *Stevens* "to produce a diaper providing an improved fit to the wearer" because *Allen* purportedly already provides a design to "optimize the comfort of the wearer." The Examiner has provided no motivation as to why one skilled in the art would make this modification and therefore the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

Not only is there no suggestion or motivation to combine, but adding the outer cover of *Stevens* to the article of *Allen* would **frustrate** the purposes of *Allen*, i.e., to create a void space between the topsheet and the absorbent core and to reduce the contact force on the wearer.

*Allen* states that

ideally the longitudinally contracted and foreshortened topsheet 12' will generally conform to the wearer, while the larger radius of curvature of the absorbent core 18' allows the core 18' to **fall away** from the topsheet 12' and create the void space 28' thereinbetween."(col. 13: lines 1-6, emphasis added)

*Stevens* provides a **resiliently stretchable outer cover** to provide a "form-fitting, anatomically self-adjusting disposable diaper that conforms to the baby's shape." (col. 3: lines 48-52). If the **outer cover** of *Stevens* provides a conforming fit, one skilled in the art would not, therefore, be motivated to add the outer cover of *Stevens* to the article of *Allen*. Doing so would frustrate the object of *Allen*, i.e., to create a void space, because the

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resiliently stretchable outercover of *Stevens* would not allow the core 18', of *Allen*, to fall away from the topsheet 12' and create the void space 28'.

The Examiner maintains that

the combination of outer cover of *Stevens* to provide a conforming fit would not frustrate the purpose of *Allen* because the inner layer contracted or foreshortened relative to the length and width of the outer layer creates the void space. (OA at page 10).

While the void space of *Allen* may be created by foreshortening the inner layer in the longitudinal direction, one skilled in the art would not be motivated to add the resiliently stretchable outercover of *Stevens* if trying to minimize the contact pressure as taught by *Allen*.

No *prima facie* case of obviousness has been established because there is no suggestion or motivation to modify the reference or combine reference teachings, there is no reasonable expectation of success, and the references do not teach or suggest all the claim limitations. Applicants respectfully request these rejections be withdrawn.

By way of the Office Action mailed September 9, 2005, claims 14 and 44 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,037,416 to *Allen et al. (Allen)* in view of U.S. Patent Number 5,269,775 to *Freeland (Freeland)*. This rejection is respectfully traversed.

Claims 14 and 44, require that "the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece", as discussed above. Neither *Allen* nor *Freeland*, alone or in combination, teach or suggest a disposable absorbent garment having an elastic inner layer as claimed. Therefore, a *prima facie* case of obviousness has not been established because the prior art references do not teach or suggest all the claim limitations. Applicants respectfully request the rejection as to these claims be withdrawn.

Additionally, there is no motivation to combine *Allen* and *Freeland*. The Examiner summarily states that

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It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the garment of Allen with an outer layer having a greater width in the lateral direction as taught by Freeland to provide a more comfortable fit to the wearer while the garment is in use. (OA at page 5).

Again, the Examiner has made a conclusory statement without providing any motivation. *Freeland* states that

The difference in **longitudinal dimension** between the topsheet 22 and the backsheet 24 foreshortens the topsheet 22 relative to the backsheet 24 creating a void space 52 therebetween.... (col. 4; ll. 65-68, emphasis added).

*Allen* similarly states

The void space 28 between the topsheet 12' and the absorbent core 18' is created by **longitudinally** contracting or foreshortening the topsheet 12'. (col. 12; ll. 47-50, emphasis added).

Therefore, while *Freeland* indicates that the backsheet **can** be wider than the topsheet, neither *Allen* nor *Freeland* provides any reason as to why one skilled in the art would be motivated to make this modification. One skilled in the art would learn from the teachings of *Allen* and *Freeland* that **longitudinal** foreshortening is the way to create a void. The Examiner's purported motivation of "providing a void space while additionally providing for shaping of the article and snug inner layer fit" is therefore not supported by the actual teachings of *Allen* and *Freeland*.

For at least these reasons, the rejection as to claims 14 and 44 should be withdrawn.

By way of the Office Action mailed September 9, 2005, claim 29 stands rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,037,416 to *Allen et al. (Allen)* in view of U.S. Patent Number 4,756,709 to *Stevens (Stevens)* and further in view of U.S. Patent Number 5,269,775 to *Freeland (Freeland)*. This rejection is respectfully traversed.

Claim 29 requires that "the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece", as

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discussed above. Neither *Allen* nor *Freeland* nor *Stevens*, alone or in combination, teach or suggest a disposable absorbent garment having an elastic inner layer as claimed.

Also, as discussed above, there is no motivation to combine *Allen* and *Freeland* or *Allen* and *Stevens*. Likewise, the Examiner has provided no motivation to combine *Allen*, *Freeland* and *Stevens*.

Therefore, a *prima facie* case of obviousness has not been established because the prior art references do not teach or suggest all the claim limitations and there is no motivation to combine the references. Applicants respectfully request the rejection as to this claim be withdrawn.

**By way of the Office Action mailed September 9, 2005, claims 6, 8, 36, 38 and 40 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,037,416 to *Allen et al.* (*Allen*) in view of U.S. Patent Number 5,817,086 to *Kling et al.* (*Kling*). This rejection is respectfully traversed.**

Claims 6, 8, 36, 38 and 40 require that “the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece”, as discussed above. Neither *Allen* nor *Kling*, alone or in combination, teach or suggest a disposable absorbent garment having an elastic inner layer as claimed. Therefore, a *prima facie* case of obviousness has not been established because the prior art references do not teach or suggest all the claim limitations. Applicants respectfully request the rejection be withdrawn.

As to claims 8 and 38 specifically, the Examiner acknowledges at page 6 that *Allen* “fails to address the use of impermeable inner layers....” However, the Examiner asserts that

it would be obvious to one of ordinary skill in the art at the time of the invention to construct the apertured inner layer of *Allen* with a liquid impermeable material as taught by *Kling* to provide a dry skin-contacting surface to the wearer. (OA at page 6).



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*Allen* specifically teaches away from this combination by teaching that the topsheet is liquid pervious to permit liquids to readily penetrate through. (col. 6: lines 16-18). One skilled in the art would not be motivated to add the liquid impermeable inner layer of *Kling*.

*Kling* discusses a liquid-impermeable topsheet in **conjunction** with the **specific** embodiment illustrated in Figs. 5 and 6. In that embodiment, there is a large front opening 431 through which urine is to pass, thus allowing the topsheet to be liquid-impermeable. However, *Allen* specifically teaches that, "the size of the passageway 21' is a balance between the **minimum** size necessary to accommodate variations in the placement of the anus relative to the perineum and various cross-sections of solid fecal material, while minimizing undue skin contact with such waste materials." (col. 12: lines 33-38, emphasis added).

One skilled in the art would NOT be motivated to take the liquid-impermeable topsheet of *Kling*, designed for urine and made useable only by the large front opening, and construct the inner layer and opening of *Allen*, which tries to minimize the size of the opening and place it near the anus for fecal material.

As to claims 6 and 36 specifically, neither *Allen* nor *Kling*, alone or in combination, teach or suggest all the claim limitations set forth in Applicants' claim. The Examiner acknowledges at page 6 that *Allen* fails to address permeable outer layers in an absorbent garment such as a diaper as required by claims 6 and 36. The Examiner parses the word "layer" and looks to **one component** of the bottom layer **laminar** of *Kling* to find a liquid permeable outer layer.

Applicants respectfully disagree with this line of reasoning. The bottom layer 5 of *Kling* is **liquid-impermeable**. (col. 3: line 26). The bottom layer 5 can also consist of a laminate of thermoplastic layer and a fibers fabric. (col. 3: lines 63-65). There is no teaching as to whether the fiber fabric is liquid permeable. The Examiner has failed to make a *prima facie* case of obviousness with respect to claims 6 and 36 because neither *Allen* nor *Kling*, alone or in combination, teach all the claim limitations, namely, a liquid permeable outer layer. Applicants respectfully request that this rejection be withdrawn.

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By way of the Office Action mailed September 9, 2005, claims 22, 23 and 25 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,037,416 to Allen *et al.* (Allen) in view of U.S. Patent Number 4,756,709 to Stevens (Stevens) and further in view of U.S. Patent Number U.S. Patent Number 5,817,086 to Kling *et al.* (Kling). This rejection is respectfully traversed.

Claims 22, 23 and 25 require that "the elastic inner layer includes a front piece, a back piece and a crotch piece, wherein the crotch piece is attached to the front piece and the back piece", as discussed above. Neither Allen nor Stevens nor Kling, alone or in combination, teach or suggest a disposable absorbent garment having an elastic inner layer as claimed.

Also, as discussed above, there is no motivation to combine Allen and Stevens or Allen and Kling. Likewise, the Examiner has provided no motivation to combine Allen, Stevens and Kling.

Therefore, a *prima facie* case of obviousness has not been established because the prior art references do not teach or suggest all the claim limitations and there is no motivation to combine the references. Applicants respectfully request the rejection as to these claims be withdrawn.

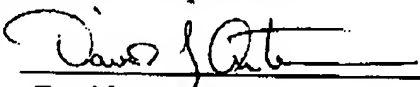
For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

Paul T. Van Gompel et al.

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